




# City of NORFOLK

To the Honorable Council  
City of Norfolk, Virginia

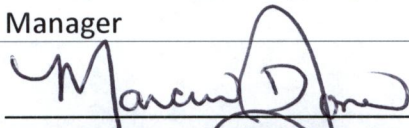
May 13, 2014

From: Steven J. Anderson, Director Department of  
Development

**Subject:** Ordinance to approve a  
lease agreement to SBA 2012 TC  
Assets LLC for property located at  
1311 Bayville Street

Reviewed:   
Ronald H. Williams, Jr., Assistant City  
Manager

**Ward/Superward:** 1/6

Approved:   
Marcus D. Jones, City Manager

**Item Number:**

**PH-3**

- I. **Recommendation:** Adopt Ordinance
- II. **Applicant:** SBA 2012 TC Assets LLC  
5900 Broken Sound Parkway NW  
Boca Raton, FL 33487-2797
- III. **Description:**  
This agenda item is to adopt an ordinance to approve a new lease agreement between the City and SBA 2012 TC Assets LLC, formerly TowerCo, for property located at 1311 Bayville Street. This lease is being renewed at revised terms for an existing free standing monopole tower.
- IV. **Analysis**  
The lease agreement allows SBA 2012 TC Assets LLC to continue to maintain and operate a monopole tower located at 1311 Bayville Street. The term of the lease agreement is for five years commencing March 1, 2015 through February 28, 2020.
- V. **Financial Impact**  
The lessee will pay the City an annual rent in the amount of \$34,778.26, to be paid on a monthly basis in the amount of \$2,898.19. Rent will increase 3% annually.
- VI. **Environmental**  
There are no known environmental issues associated with this lease.

VII. **Community Outreach/Notification**

Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

VIII. **Board/Commission Action**

N/A

IX. **Coordination/Outreach**

This letter has been coordinated with Department of Economic Development-Division of Real Estate and the City Attorney's Office.

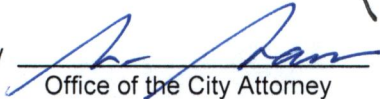
Supporting Material from the City Attorney's Office:

- Ordinance
- Lease Agreement

Form and Correctness Approved:



By

  
Office of the City Attorney

Contents Approved:

By

  
DEPT.

NORFOLK, VIRGINIA

---

## ORDINANCE No.

AN ORDINANCE APPROVING A LEASE AGREEMENT WITH SBA 2012 TC ASSETS, LLC, FOR A PARCEL OF LAND AT 1311 BAYVILLE STREET, IN THE CITY OF NORFOLK.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the terms and provisions of the Lease Agreement between the City of Norfolk, as lessor, and SBA 2012 TC Assets, LLC, as lessee, a copy of which is attached hereto, by which the City of Norfolk leases to SBA 2012 TC Assets, LLC a parcel of land known as 1311 Bayville Street, in the City of Norfolk, Virginia, upon conditions specifically set forth therein, are hereby approved.

Section 2:- That the City Manager is authorized to execute said lease for and on behalf of the City.

Section 3:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.

## LEASE AGREEMENT

**THIS LEASE AGREEMENT** (the "Lease") is made this \_\_\_\_ day of \_\_\_\_\_, 2014 between the **CITY OF NORFOLK**, a municipal corporation of Virginia, ("Lessor") and **SBA 2012 TC ASSETS, LLC**, a Delaware limited liability company ("Lessee").

1.     Description of Leased Property. Lessor hereby leases to Lessee and Lessee hereby rents from Lessor 2,210 square feet of that certain piece or parcel of land (hereinafter referred to as the Premises), located at 1311 Bayville Street, in the City of Norfolk, Virginia, said Premises being described as shown in Exhibit A, hereto attached and incorporated by reference, together with a twenty-foot (20') wide access to public property and eight-foot (8') wide utility easement.

2.     Term of Lease. This Lease shall be for a term of five (5) years ("Term"), beginning on the first day of March 2015 and ending the last day of February 2020.

3.     Use and Maintenance of Property.

3.1     The Premises and all rights and privileges herein granted shall be used only for the purpose of constructing, maintaining, modifying, enhancing, repairing, operating and removing a wireless communications facility with a 130' stealth flagpole and a 30'X 30' equipment shelter, and uses incidental thereto and all related appurtenances and improvements thereto. Lessee shall keep a security fence consisting of wrought iron or wrought-iron-like materials around the perimeter of the Premises. It is understood and agreed that all improvements shall be undertaken at Lessee's sole expense. Lessee will maintain the Premises in a reasonable and safe condition. Lessee and any other user shall not make any significant and material additions to their buildings, generators or stealth flagpole without obtaining prior written consent from Lessor, which consent shall not be unreasonably withheld, conditioned or delayed. However, no consent from Lessor

will be required when Lessee adds a carrier to the stealth flagpole and the carrier's equipment to the existing structure. In no event shall the use of the Premises by Lessee or any other user be such as to constitute a nuisance or be harmful to the normal and customary operations of Lessor and/or neighboring landowners. Lessor shall take no action that would adversely affect the status of the Premises with respect to the proposed use by Lessee.

3.2 Lessee shall keep and maintain the Premises in a good and complete state of repair and condition, except for ordinary wear and tear. Lessee shall make all repairs and replacements of every kind and character, interior and exterior, structural and nonstructural, ordinary and extraordinary, including, but not limited to plumbing, heating, ventilation, air conditioning and electrical equipment and systems, lights and lighting, stanchions and fences, if any, and sidewalks, and paved areas if any, necessary to preserve and maintain the Premises and the appurtenances belonging thereto, and will not call upon Lessor during the term of this lease for the making of any repairs or replacements whatsoever. All repairs and replacements shall:

- (a) be performed in a good and workmanlike manner,
- (b) be at least substantially equal in quality and usefulness to the original work,
- (c) be of first-class modern character, and
- (d) not diminish the overall value of the Premises.

4. Acceptance of Premises. Lessee acknowledges that it is familiar with the Premises, and hereby agrees to accept the Premises in their present condition, as is. Lessee further acknowledges that neither Lessor nor anyone on Lessor's behalf has made any representations or warranties with respect to the condition of the Premises.

5. Rent.

5.1 Lessee covenants and agrees to pay to Lessor rent in monthly installments payable in advance, without demand, on the first day of each calendar month.

Based on an annual increase of three percent (3%), the Annual Rent and monthly installments of the rent shall be as follows:

<u>Period of Term</u>	<u>Annual Rent</u>	<u>Monthly Installment</u>
March 2015 to February 2016	\$34,778.26	\$2,898.19
March 2016 to February 2017	\$35,821.60	\$2,985.10
March 2017 to February 2018	\$36,896.25	\$3,074.69
March 2018 to February 2019	\$38,003.13	\$3,166.93
March 2019 to February 2020	\$39,143.22	\$3,261.94

5.2 No payment by Lessee or receipt by Lessor of a lesser amount than the Rent stipulated in this lease shall be deemed other than on account of the stipulated rent, nor shall any endorsement or statement on any check or payment, or any writing accompanying any check or payment of such rent, be deemed an accord and satisfaction, and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance of such rent or pursue any other remedy provided in this lease.

5.3 It is the purpose and intent of Lessor and Lessee that the rent shall be absolutely net to Lessor, so that this lease shall yield, net, to Lessor, the rent specified in Section 4.1 hereof, in each month during the term of this lease without any abatement, deduction, set off or counterclaim, and that all costs, expenses and obligations of every kind and nature whatsoever relating to the Premises which may arise or become due during or out of the term of this lease, except debt service arising in connection with any mortgage placed on the Premises by Lessor,

unless the charge or obligation arises as a result of an Event of Default (as hereinafter defined) by Lessee hereunder shall be paid by Lessee.

6. Insurance.

6.1 Lessee shall obtain and maintain Lessor's and Lessee's Public Liability Insurance for the joint and separate benefit of Lessor and Lessee, in an amount not less than \$500,000 for injury to or death of one person, \$1,000,000 for any one occurrence and \$50,000 for property damage, or in such higher limits as shall be reasonably required by Lessor.

6.2 At least 15 days prior to the Commencement Date, Lessee shall deliver to Lessor certificates evidencing the issuance of the policy required by Section 6.1 and also evidencing that the policy is then in effect. All insurance policies shall provide for 30 days advance notice in writing to Lessor prior to cancellation or modification.

6.3 Lessee agrees to look solely to the proceeds of its own insurer for indemnity against exposure for casualty losses of property or business interruption. Lessee warrants that its liability, property and business interruption insurers shall not have rights against Lessor by virtue of assignment, subrogation, loan agreement or otherwise.

6.4 Lessee shall have the right to self-insure for all coverage required under this Paragraph 6 for any claim of less than or equal to \$2,000,000.00.

7. Utilities. Lessee shall, at its own cost and expense, pay all utility meter and services charges, including but not limited to those for gas, sewer, electricity, water, standby sprinkler charges and any deposits required by utility suppliers with respect to the Premises.

8. Right to Terminate. Lessee shall have the unilateral right to terminate this Lease, at any time, by providing Lessor with not less than six (6) months prior written notice. Said notice of termination shall be effective upon the date set forth in said notice. Further, in the

event of material breach or default of any of the terms or conditions of this Lease by either party, the non-breaching party may terminate the Lease by giving thirty (30) days written notice to the breaching party, provided that the Lease shall not terminate if the breaching party has cured the breach or default to the satisfaction of the non-breaching party prior to the expiration of the thirty-day period. Notwithstanding the foregoing, Lessee may terminate this Lease upon sixty (60) days prior written notice, in the event that Lessee is unable to obtain or maintain any necessary government permits or approvals or if any such permit or approval is withdrawn or terminated. Upon termination of this Lease by Lessee, this Lease shall become null and void and all of the parties shall have no further obligations except that any monies owed up to the date of termination shall be paid within thirty (30) days after the termination date.

9. City's Representations. City represents that:

a. Lessee shall have access to its equipment and antenna at all time through public property.

b. Lessor shall replace the flag on an as-needed basis, but no more than twice a year; it shall also maintain all required lighting as consistent with prescribed flag protocol.

c. For the life of this Lease, Lessor grants Lessee a non-exclusive easement for the purpose of installing, maintaining, upgrading, repairing and removing all utilities and access required by Lessee in connection with Lessee's operations on the Premises.

10. Hold Harmless. Lessee hereby assumes all risk of and responsibility for, and agrees to defend, indemnify and hold harmless Lessor, from and against any and all claims, demands, suits, actions, recoveries, judgments, and costs and expenses of any nature whatsoever, made in conjunction therewith, brought or obtained on account of the loss of life, property or injury or damages to the person or property of any person and which shall be due to or arise out



of, or result from Lessee's construction on or use of the Premises, whether such person be the Lessor, its agents or employees, or any third person in no way connected to the parties hereto. Lessee is not required to defend, indemnify or hold harmless Lessor, its officers, agents and employees, from assertions that any of them were negligent in the use of the Premises, nor is Lessee required to defend, indemnify or hold harmless Lessor and said persons from liability based on their negligence in the use of the Premises. To the extent permitted by law, and subject to any rights to sovereign immunity which may be applicable, Lessor will be responsible for loss or damage caused by the negligence or willful misconduct of Lessor's employees, representatives or agents.

11. Assignment and Subletting. With the exception of assignments to its affiliates, parent company, or any entity acquiring a majority of the voting interest or assets of the Lessee (in which event consent of the Lessor shall not be required), Lessee will not assign this lease, sublet the Premises or permit co-location on the tower without obtaining Lessor's prior consent in writing. Landlord's consent shall not be unreasonably delayed, withheld or conditioned and, other than the Co-Location Fee or subletting fee (as defined in Section 12, below) payable by Lessee to Lessor, Lessee shall not be required to pay any additional consideration in exchange for Lessor's consent.. Any change in ownership or control of management of the Lessee, directly or indirectly, whether by merger, consolidation or otherwise, shall be deemed an assignment for the purposes of this section. If this lease be assigned with the consent of Lessor as aforesaid, Lessor may collect rent from the assignee or occupant and apply the net amount collected to the rent herein reserved; but notwithstanding such assignment or subletting, Lessee shall remain liable for the payment of rent reserved hereunder and for the performance of all obligations imposed upon Lessee by this lease.

12. Subletting/Co-Location on Tower. Lessee agrees that, to the extent of the structural and technological capacity of the communications tower contemplated under this Lease, Lessee will negotiate in good faith to make available space on the tower for the equipment of other non-interfering and compatible tower users, at reasonable and competitive rental rates and/or pursuant to co-location practices in the wireless communications industry.

The parties acknowledge that any second prime user will be paying rental to the Lessee in order to co-locate its equipment on the Leased Premises, and that the Lessor shall be entitled to receive fifty percent (50%) of the rent paid to Lessee by any second prime user (the "Co-Location Fee").

Lessee shall have the right to allow one or more other tower users (above and beyond any second prime user as discussed above) to co-locate communications equipment on Lessee's tower and the Premises on a paying or non-paying basis, as the Lessee sees fit, provided that the Lessee shall first obtain the written consent of the Lessor pursuant to Section 11 and so long as the basic use of the Leased Premises is not changed. In the event the Lessee shall in the future allow location of any other users on the Lessee's tower or the Premises (above and beyond any second prime user as discussed above), the Lessee agrees that the Co-Location Fee shall be paid over to the Lessor within thirty (30) days after receipt thereof by Lessee.

13. Interference with Lessee's Business. Lessor covenants to restrict on the property of which the Premises is now a part, the construction, installation or operation of any additional wireless communications facilities which emit radio frequencies and covenants to prohibit any party from installing or operating any facilities that would result in interference with Lessee's use of the Premises, without the prior written consent of Lessee.

14. Air and Water Pollution. Lessee expressly covenants and agrees to indemnify,

defend and save Lessor harmless against any claim, damage, liability, cost, penalty, or fine which Lessor may suffer as a result of air, noise or water pollution caused by Lessee in its use of the Premises. Lessee covenants and agrees to notify Lessor immediately of any claim or notice served upon it containing any allegation that Lessee is causing air, noise, or water pollution. Lessee, in any event, will take immediate steps to halt, remedy or cure any such pollution caused by Lessee in connection with its use of the Premises. Lessee is not required to indemnify, defend or save Lessor harmless from assertions that Lessor was negligent in the use of the Premises, nor is Lessee required to indemnify, defend and save Lessor harmless from liability based on Lessor's negligence in the use of the Premises.

15. Environmental Compliance.

(a) For purposes of this section:

(i) "Hazardous Substances" include any pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials or hazardous substances as defined in or pursuant to the Resource and Conservation Recovery Act (42 U.S.C.1 SS6901 et seq.) ("RCRA"), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. SS9601 et seq.) ("CERCLA") or any other federal, state or local environmental law, ordinance, rule or regulation.

(ii) "Release" means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping.

(iii) "Notice" means any summons, citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, actual or threatened, from any authority of the Commonwealth of Virginia, the United States Environmental Protection Agency ("USEPA") or other federal, state or local agency or authority,

or any other entity or any individual, concerning any intentional or unintentional act or omission resulting or which may result in the Releasing of Hazardous Substances into the waters or onto the lands of the Commonwealth of Virginia, or into waters outside the jurisdiction of the Commonwealth of Virginia or into the "environment", as such terms are defined in CERCLA. Notice shall include the imposition of any lien on any real property, personal property or revenues of the Lessee, including but not limited to the Lessee's interest in the Premises or any of Lessee's interest in the Premises or any of Lessee's property located thereon, or any violation of federal, state or local environmental laws, ordinances, rules, regulations, governmental actions, orders or permits, or any knowledge, after due inquiry and investigation, of any facts which could give rise to any of the above.

(b) To the extent that Lessee may be permitted under applicable law to use the Premises for the generating, manufacture, refining, transporting, treatment, storage, handling, disposal, transfer or processing of Hazardous Substances, solid wastes or other dangerous or toxic substances, Lessee shall insure that said use shall be conducted at all times strictly in accordance with applicable statutes, ordinances and governmental rules and regulations. Lessee shall not cause or permit, as a result of any intentional or unintentional act or omission, a Release of Hazardous Substances on the Premises. If any such intentional or unintentional act or omission results in such a Release of Hazardous Substances on the Premises, Lessee shall promptly clean up and remediate such Release in accordance with the applicable federal, state and local regulations and to the satisfaction of a reasonable Lessor.

(c) Lessee shall comply with all applicable federal, state and local environmental laws, ordinances, rules and regulations, and shall obtain and comply with any and all permits required thereunder or any successor or new environmental laws. Upon the receipt of

any Notice, Lessee shall notify Lessor promptly in writing, detailing all relevant facts and circumstances relating to the Notice.

(d) The requirements of this Section 15 shall apply to any successor in interest to the Lessee, whether due to merger, sale of assets or other business combination or change of control.

(e) Lessee hereby agrees to defend (with counsel satisfactory to Lessor) and to indemnify and hold Lessor harmless from and against any and all claims, losses, liabilities, damages and expenses (including, without limitation, reasonable cleanup costs and attorney's fees arising under this indemnity) which may arise directly or indirectly from any use or Release of Hazardous Substances by Lessee, its contractors, employees, or invitees on the Premises and losses and claims against Lessor resulting from Lessee's failure to comply strictly with the provisions of this Section 15. Lessee is not required to indemnify, defend or save Lessor harmless from assertions that Lessor was negligent in the use of the Premises, nor is Lessee required to indemnify, defend and save Lessor harmless from liability based on Lessor's negligence in the use of the Premises. The provisions of this Section 15 shall survive the expiration or earlier termination of this lease for those occurrences arising out of Lessee's use of the Premises.

16. Surrender of Property. Lessee will surrender possession of the Premises and remove all structures, improvements, goods and chattels and other personal property in the possession of Lessee, by whomsoever owned, at the end of the term of this lease, or at such other time as Lessor may be entitled to re-enter and take possession of the Premises pursuant to any provision of this lease, and leave the Premises in as good order and condition as they were at the beginning of the term, reasonable wear and tear excepted. In default of surrender of possession

and removal of all structures, improvements; goods and chattels at the time aforesaid, Lessee will pay to Lessor the rent reserved by the terms of this lease for such period as Lessee either holds over possession of the Premises or allows its structures, improvements, goods and chattels or other personal property in its possession at such time to remain in the Premises, and in addition thereto, statutory penalties and all other damages which Lessor shall suffer by reason of Lessee holding over in violation of the terms and provisions of this lease, including all reasonable claims for damages made by any succeeding Lessee or purchaser of the Premises against Lessor which may be founded upon delay by Lessor in giving possession of the Premises to such succeeding Lessee or purchaser, so far as such damages are occasioned by the holding over of Lessee.

If Lessee fails to remove all goods and chattels and other personal property in possession of Lessee, by whomsoever owned, at the end of the term of this lease, or at such other time as Lessor may be entitled to re-enter and take possession of the Premises pursuant to any provision of this lease, Lessee hereby irrevocably makes, constitutes and appoints Lessor as the agent and attorney-in-fact of Lessee to remove all goods and chattels and other personal property, by whomsoever owned; from the Premises to a reasonably safe place of storage, such moving and storage to be at the sole cost and expense of Lessee, and Lessee covenants and agrees to reimburse and pay to Lessor all expenses which Lessor incurs for the removal and storage of all such goods and chattels. In addition, at the option of Lessor, Lessee shall be deemed to have abandoned such goods, chattels and other personal property and the same shall become the property of Lessor. Lessee shall reimburse and pay Lessor for all expenses incurred in the removing or disposing of the abandoned property.

No act or thing done by Lessor shall be deemed an acceptance of the surrender of the Premises prior to the expiration or sooner termination of this lease, unless Lessor shall

execute a written release of Lessee. Lessee's liability hereunder shall not be terminated by the execution by Lessor of a new lease of the Premises.

17. Recording. Should Lessee intend to record a Memorandum of Lease with the appropriate Recording Officer, Lessor shall execute such Memorandum promptly upon Lessee's request. The date set forth in any Memorandum of Lease shall be for recording purposes only and bears no reference to commencement of either term or rent payments.

18. Lessor's Covenant of Title. Lessor covenants that Lessor is seized of good and sufficient title and interest to the property of which the Premises is a part and has full authority to enter into and execute this Lease. Lessor further covenants that (1) there are no aspects of title that might interfere with or be adverse to Lessee's interests in and intended use of the Premises and (2) title shall be such that Lessee will have the ability to obtain title insurance at regular rates.

19. Quiet Enjoyment. Lessor covenants that Lessee, on paying Rent and performing the covenants of this Lease, shall peaceably and quietly have, hold and enjoy the Premises.

20. Improper Use. Lessee agrees not to use or allow the Premises to be used for any unlawful or immoral purposes or in violation of any certificate of occupancy or certificate of compliance covering the use of the Premises or any portion thereof, and will not suffer any act to be done or any condition to exist on the Premises, or any article to be brought thereon, which may be dangerous, unless safeguarded as required by law, or which may, in law, constitute a nuisance, public or private.

21. Late Fee. For any payments of rent paid after the date such payment was due, Lessee shall pay a late fee of 5% of the amount not paid when due, within five (5) days after receipt of written notice. The payment of any late fee shall not in any way be curative of any

Event of Default and payments pursuant to this Section 21 shall not affect any of Lessor's rights and remedies under Section 22.

22. Default by Lessee

22.1 If during the term of this lease there shall occur any of the following events (Events of Default):

(a) if Lessee shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, adjudicated a bankrupt or insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or not contesting the material allegations of a petition against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Lessee or of any material part of its assets, and such appointment shall not have been vacated; or

(b) if, within 60 days after the commencement of any proceeding against Lessee seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if, within 60 days after the appointment without the consent or acquiescence of Lessee of any trustee, receiver or liquidator of Lessee or of any material part of its assets, such appointment shall not have been vacated; or

(c) if the interest of Lessee in the Premises shall be sold under execution or other legal process; or

(d) if Lessee shall fail to pay any installment of the rent within five (5) days when due; or



(e) if Lessee shall fail to perform or observe any requirement, obligation, agreement, covenant or condition of this lease, other than the payment of any installment of Base Rent or Additional Rent, and any such failure shall continue for 15 days after Lessor gives Lessee notice thereof, or if such failure cannot be remedied within 15 days, then for a reasonable time thereafter, provided Lessee commences to remedy such failure within said 15-day period and prosecutes the same to completion with diligence; or

(f) if any representation or warranty made by Lessee contained in this lease shall prove to be incorrect in any material respect on the date upon which it was made; then at any time following any of such Events of Default, Lessor, without waiving any other rights herein available to Lessor at law or in equity, may either (1) give Lessee notice of termination of this lease, or (2) without terminating this lease, give Lessee notice of Lessor's intention to re-enter and take possession of the Premises, with legal process. The giving of either of such notices to Lessee shall terminate Lessee's right to possession of the Premises under this lease without prejudice, however, to the rights of Lessor to exercise all other available legal remedies and without discharging Lessee from any of its liabilities hereunder.

22.2 If Lessor elects to terminate Lessee's right to possession of the Premises under Section 22.1 following an Event of Default, Lessor may re-enter and take possession of the Premises, with legal process, and Lessee hereby waives any claim for damages as a result thereof, and Lessee shall be obligated to pay to Lessor as damages upon demand, and Lessor shall be entitled to recover of and from Lessee:

(a) all rent which is in arrears as of the date of termination of Lessee's right to possession, plus

(b) the cost to Lessor of all reasonable legal and other expenses and costs, including reasonable attorneys' fees, incurred by Lessor in obtaining possession of the Premises, in enforcing any provision of this lease, in preserving the Premises during any period of vacancy, in making such alterations and repairs to the Premises as the Lessee was required to make pursuant to the terms of this lease and in reletting the Premises, including all reasonable brokerage commissions therefore.

Lessor may relet the Premises, or any part thereof and may grant concessions or charge a rent in excess of that agreed to in this lease agreement. In that event, lessee shall pay rent, damages, costs and expenses, as specified in 22.2 above, and the net amount of rent collected and received by Lessor as a result of reletting the Premises during the balance of the term shall be applied against the rent still owed by Lessee, not against damages or expenses. Lessee shall have no right to any excess.

Lessor may sue for and collect any amounts which may be due pursuant to the provisions of Section 22.2 above from time to time as Lessor may elect, but no such suit shall bar or in any way prejudice the rights of Lessor to enforce the collection of amounts due at any time or time thereafter by a like or similar proceeding.

Lessee agrees to pay all costs of proceedings by Lessor for the enforcement of any breach of the terms and conditions of this lease by the Lessee, including reasonable attorneys' fees and expenses, payable immediately upon the filing of any suit for possession or money damages.

No remedy herein conferred upon or reserved to Lessor is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or

by statute. The receipt and acceptance by Lessor of rent with knowledge of the default by Lessee in any of Lessee's obligations under this lease shall not be deemed a waiver by Lessor of such default. Nothing contained in this lease shall limit or prejudice the right of Lessor to prove for and obtain in proceedings for bankruptcy or insolvency an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater, equal to, or less than the amount of the loss or damages referred to above.

No waiver by Lessor of any Event of Default or any default by Lessee in any covenant, agreement or obligation under this lease shall operate to waive or affect any subsequent Event of Default or default in any covenant, agreement or obligation hereunder, nor shall any forbearance by Lessor to enforce a right or remedy upon an Event of Default or any such default be a waiver of any of its rights and remedies with respect to such or any subsequent default or in any other manner operate to the prejudice of Lessor.

### 23. Default by Lessor.

23.1 If during the term of this lease there shall occur any of the following events ("Lessor Events of Default"):

(a) if Lessor shall fail to perform or observe any requirement, obligation, agreement, covenant or condition of this lease, and any such failure shall continue for 15 days after Lessee gives Lessor notice thereof, or if such failure cannot be remedied within 15 days, then for a reasonable time thereafter, provided Lessor commences to remedy such failure within said 15-day period and prosecutes the same to completion with diligence; or

(b) if any representation or warranty made by Lessor contained in this lease shall prove to be incorrect in any material respect on the date upon which it was made.

Following any Lessor Events of Default, Lessor agrees to pay all costs of proceedings by Lessee for the enforcement of any breach of the terms and conditions of this lease by the Lessor, including reasonable attorneys' fees and expenses, payable immediately upon the filing of any suit for possession or money damages.

No remedy herein conferred upon or reserved to Lessee is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. The continued occupancy of the Premises and payment of rent by Lessee with knowledge of the default by Lessor in any of Lessor's obligations under this lease shall not be deemed a waiver by Lessee of such default.

No waiver by Lessee of any Lessor Event of Default or any default by Lessor in any covenant, agreement or obligation under this lease shall operate to waive or affect any subsequent Lessor Event of Default or default in any covenant, agreement or obligation hereunder, nor shall any forbearance by Lessee to enforce a right or remedy upon an Lessor Event of Default or any such default be a waiver of any of its rights and remedies with respect to such or any subsequent default or in any other manner operate to the prejudice of Lessee.

24. Taxes. Lessee agrees to pay and discharge any present or future taxes, assessments, duties, or impositions assessed, charged, or imposed on Lessee's leasehold interest on the Premises and all improvements constructed by Lessee thereon. Lessee shall not be required to pay any portion of any taxes, assessments, duties or impositions resulting from the value of the land adjacent to the Premises, or from the value of new buildings or improvements constructed on the Premises or on adjacent land by Lessor.

25. Liens or Encumbrances. Lessee shall not suffer the Premises or any

improvements thereon to become subject to any lien, charge or encumbrance, and shall indemnify Lessor against all such liens, charges or encumbrances. Lessee shall, within ninety (90) days after written notice thereof from Lessor, discharge or bond any mechanic's lien or other lien, charge or order for the payment of money filed against the Premises as the result of the act or omission of Lessee.

Additionally, Lessee may mortgage or grant a security interest in this Lease and Lessee's equipment, upon notice to Lessor, and may assign this Lease and such equipment to any such mortgagees or holders of security interests including their successors or assigns (hereinafter referred to collectively as "Mortgages"), provided such mortgages agree to be bound by the terms and provisions of this Lease. In such event, Lessor shall execute such consent to leasehold financing as may be reasonably required by Mortgagees.

26. Applicable Law. This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the Commonwealth of Virginia . In the event that a dispute arises under this Lease, the parties agree that the venue for any litigation shall be the City of Norfolk, Virginia.

27. Notices. All notices hereunder shall be in writing and shall be given by (i) established express delivery service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide reasonable means for accomplishing delivery. The notices shall be sent to the parties at the following addresses:

Lessor:

Lease Coordinator  
Department of Development  
500 E. Main Street, Suite 1500  
Norfolk, Virginia 23510

With a copy to:

City Attorney  
City of Norfolk  
900 City Hall Building  
810 Union Street  
Norfolk, Virginia 23510

Lessee:

SBA Communications  
5900 broken Sound Parkway NW  
Boca Raton, FL 33487-2797  
Attn: Real Estate Department  
Re: ID #Va48111-A

27. Partial Invalidity. If any term of this Lease is found to be void or invalid, then such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.

28. Successors and Assigns. Except as otherwise provided herein, this Lease shall extend to and bind the heirs, personal representatives, successors and assigns of the parties hereto.

29. Entire Agreement. Lessor and Lessee agree that this Lease, including its attachment, contains all of the agreements, promises and understandings between Lessor and Lessee. No verbal or oral agreements, promises or understandings shall be binding upon either Lessor or Lessee in any dispute, controversy or proceeding at law. Any addition, variation or modification to this Lease shall be void and ineffective unless made in writing and signed by

authorized agents of the parties hereto. Authorized agents for Lessee have received authority from Lessee's corporate officers and will provide proof of such authorization to Lessor, and for Lessor, the City Manager or an Assistant City Manager of the City of Norfolk.

30. Numbering and Headings. The numbering and the headings of the paragraphs in this Lease are only for the purpose of convenience and should be disregarded in the construction or interpretation of this Lease.

31. Construction of Document. Lessor and Lessee acknowledge that this document shall not be construed in favor of or against the drafter and that this document shall not be construed as an offer until such time as it is executed by one of the parties and then tendered to the other party.

32. Recording. Upon request of Lessee, Lessor shall execute and deliver to Lessee such documents as Lessee requests to evidence Lessee's rights in the Premises, including a memorandum of lease. Such documents may be filed of record in the property records in the county in which the Premises are located.

[Signatures on the following pages]

**IN WITNESS WHEREOF**, Lessor and Lessee having read the foregoing and intending to be legally bound hereby, have executed this Lease as of the day and year first written above.

**CITY OF NORFOLK, VIRGINIA**

By: \_\_\_\_\_[SEAL]  
Marcus D. Jones, City Manager

Attest:

\_\_\_\_\_  
City Clerk

STATE OF VIRGINIA  
CITY OF NORFOLK, to-wit:

I, \_\_\_\_\_, a Notary Public in and for the City of Norfolk, in the State of Virginia, whose term of office expires on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, do hereby certify that Marcus D. Jones, City Manager and R. Breckenridge Daughtrey, City Clerk, respectively, of the City of Norfolk, whose names as such are signed to the foregoing instrument dated \_\_\_\_\_, 20 , have acknowledged the same before me in my City and State aforesaid.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

\_\_\_\_\_[SEAL]  
Notary Public

Approved as to Content:

\_\_\_\_\_  
Director of Development

Approved as to Form and Correctness:

\_\_\_\_\_  
Deputy City Attorney



**SBA 2012 TC ASSETS, LLC**

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF  
CITY OF \_\_\_\_\_, to-wit:

I, \_\_\_\_\_, a Notary Public in and for the State of Virginia at Large, whose commission expires on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_, do hereby certify that \_\_\_\_\_, a corporate representative of TowerCo whose name is signed as such to the foregoing instrument dated \_\_\_\_\_, 20 \_\_, has acknowledged the same before me in my City and State.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_.

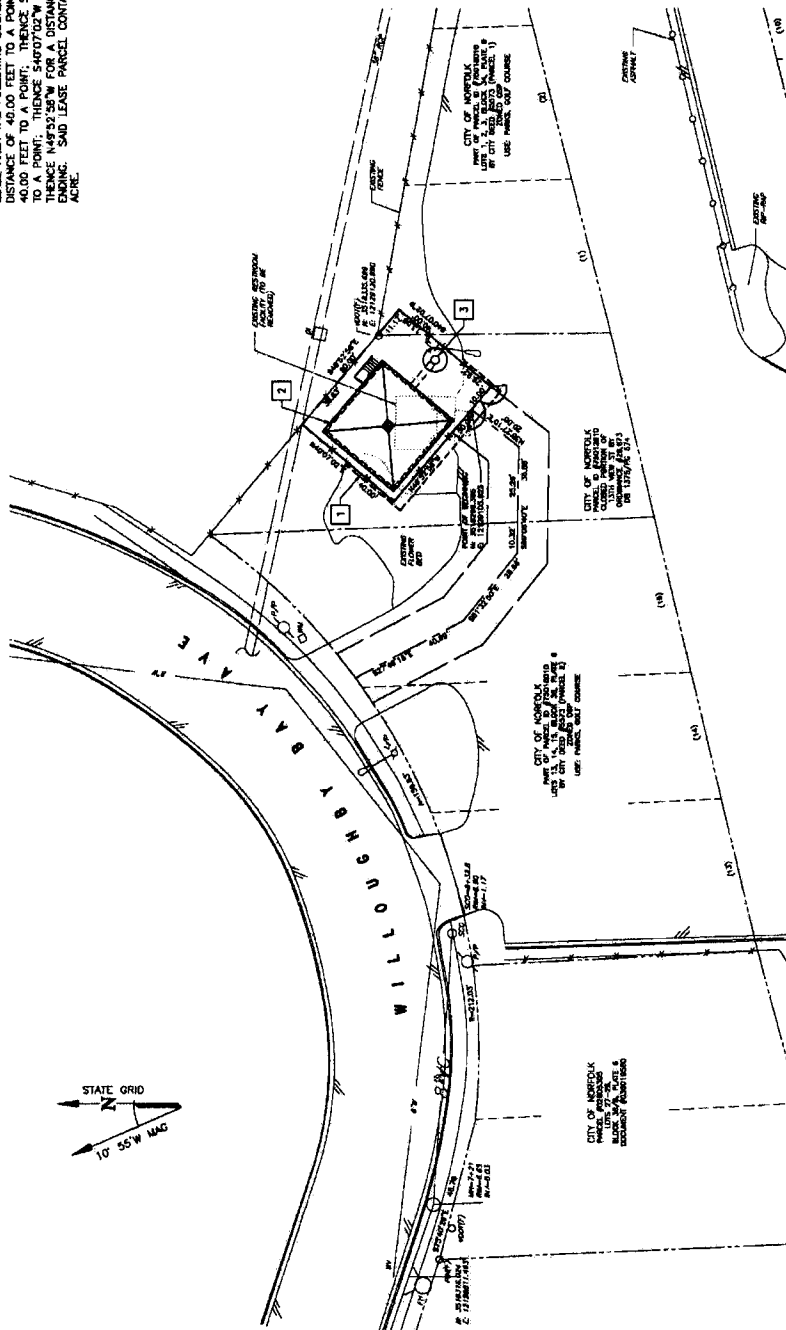
\_\_\_\_\_[SEAL}  
Notary Public

## CONSTRUCTION NOTES

- |   |   |
|---|---|
| 1 | PROPOSED 50' X 40' SPRINT PCS COMPOUND/LEASE AREA. SEE ENLARGED SITE PLAN, SHEET C-3. |
| 2 | PROPOSED 30' X 30' SPRINT PCS EQUIPMENT SHELTER.                                      |
| 3 | PROPOSED 130' SPRINT PCS STEALTH FLAGPOLE. SEE ELEVATION VIEW, SHEET C-4.             |

FRONT YARD SETBACK	52.4'
SIDE YARD SETBACK	10.0'
REAR YARD SETBACK	42.7'
STREET SETBACK	52.4'

## LEGAL DESCRIPTION

[illegible]

**GRAPHIC SCALE**

SCALE: 1"=40' (FOR 11" X 17" PLOT)  
SCALE: 1"=20' (FOR 24" X 36" PLOT)

RECORDABLE SURVEY

SCALE: 1" = 20'

RECORDABLE  
SURVEY

C-2A